

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAVID ROBINSON, JR.,

Plaintiff,

**1:09-cv-0455
(GLS\RFT)**

v.

**NEW YORK STATE; GEORGE
ALEXANDER**, Chairman, New York State
Division of Parole; **MICHAEL FORK**,
Bureau Chief; **Ms. BENJAMIN**, Senior
Parole Officer; **Mr. FERNANDEZ**, Parole
Officer,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

David Robinson, Jr.
Pro Se
47 S. Montgomery Street
Valley Stream, NY 11580

FOR THE DEFENDANTS:

HON. ANDREW M. CUOMO
New York Attorney General
Albany Office
The Capitol
Albany, NY 12224

C. HARRIS DAGUE
Assistant Attorney General

**Gary L. Sharpe
U.S. District Judge**

MEMORANDUM-DECISION AND ORDER

On June 17, 2009, pro se plaintiff David Robinson, Jr., filed a renewed application for an Order to Show Cause seeking a Preliminary Injunction and Temporary Restraining Order (TRO) asking the court to temporarily restrain and enjoin defendants from enforcing alleged unconstitutional terms and conditions of his post-release supervision. (See *generally* Dkt. No. 15.)

In seeking a TRO, a plaintiff must satisfy the same prerequisites as a party seeking a preliminary injunction. See *Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. N.Y. Shipping Ass'n, Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992). In general, a district court may grant a preliminary injunction where the moving party establishes: (1) that he is likely to suffer irreparable injury if the injunction is not granted; and (2) either (a) a likelihood of success on the merits of his claim, or (b) the existence of serious questions going to the merits of his claim and a balance of the hardships tipping decidedly in his favor. See *Moore v. Consol. Edison Co. of N.Y., Inc.*, 409 F.3d 506, 510 (2d Cir. 2005). "Such relief ... is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of

persuasion.” *Id.* (internal quotation marks and citation omitted).

Having reviewed Robinson’s Order to Show Cause application, Robinson has failed to satisfy the prerequisites for the granting of a Preliminary Injunction and TRO. As the Attorney General points out, Robinson has failed to provide any specific explanation of how current and future enforcement of his parole conditions and terms will cause irreparable harm to him. (See Def. Mem. of Law at 4, Dkt. No. 17.) Rather, Robinson merely mentions “irreparable injury” in a conclusory and vague manner. (See Pl. Mot. at ¶¶ 29-31, 34, Dkt. No. 15.) However, such speculative and non-specific harm is insufficient. See *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). Moreover, in construing Robinson’s pro se application liberally, see *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006), the court finds that the post-release conditions placed on Robinson are unlikely to cause him irreparable harm. Therefore, because he has failed to make any showing of irreparable injury, and has failed to meet the remaining requirements,¹ Robinson’s application for an Order to

¹Robinson has not demonstrated a likelihood of success on the merits of his claim that the authority of the New York State Division of Parole rests on an unconstitutional delegation of power. (See Pl. Mot. at ¶¶ 12-26, Dkt. No. 15.) Instead, as discussed by the Attorney General, the Division of Parole’s power to impose special conditions on individuals pursuant to post-release supervision is well-established. (See Def. Mem. of Law at 5-7, Dkt. No. 17 (citing, *inter alia*, *Ahlers v. N.Y. State Div. of Parole*, 1 A.D.3d 849 (3d Dep’t 2003); N.Y. EXEC. LAW §§

Show Cause seeking a Preliminary Injunction and TRO is denied.

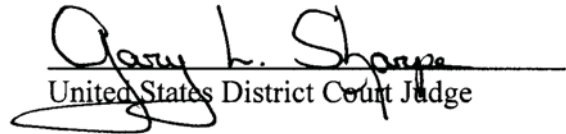
WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that the Order to Show Cause application for a Preliminary Injunction and Temporary Restraining Order is **DENIED**; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-Decision and Order to the parties.

IT IS SO ORDERED.

November 2, 2009
Albany, New York


United States District Court Judge

259-c, 259-i(5); 9 N.Y.C.R.R. § 8003.3)); see also *Briguglio v. N.Y. State Bd. of Parole*, 24 N.Y.2d 21 (1969); *Menechino v. Oswald*, 430 F.2d 403 (2d Cir. 1970). And Robinson has not demonstrated a likelihood that the unique conditions placed on him are not rationally related to preventing commission of future offenses. See *Jones v. N.Y. State Div. of Parole*, 24 A.D.3d 827, 829 (3d Dep't 2003). Furthermore, for similar reasons, Robinson has failed to allege the existence of serious questions going to the merits of his claim or that the balance of hardships tips decidedly in his favor. See *Moore*, 409 F.3d at 510.